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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1145th MEETING

Held at Headquarters, New York,
on Wednesday, 8 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (continued) (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitic and Mr. Strugar (Yugoslavia) took places at the Committee table.

2. The CHAIRMAN invited the Committee to continue asking questions of the Yugoslav delegation under section I of the list of issues.

3. Mr. AGUILAR, noting that over half of the Yugoslav report was devoted to a discussion of issues under article 1 of the Covenant, asked the delegation to expound on the federal Government's conception of self-determination of peoples and of the notion of "nation" as opposed to "republic". He also wondered whether the Government in fact ascribed the worsening human rights situation to political pluralism, as implied in paragraph 81 of the report. Regarding the application of the Covenant under the current Yugoslav legal system, he assumed that the proposed constitutional amendment outlined in paragraph 5 of the report was intended to legislate rights that were not currently protected by the Constitution. It would be interesting to learn what reasoning would dictate the pronouncing of a sentence of capital punishment, permissible only in times of war, also during the period just preceding a war (para. 5 (b)) and what offences would then be punishable by death; and whether the prohibition against torture indeed applied only to offenders (para. 5 (c)).

4. Mr. ANDO expressed regret that the report concentrated entirely on the past three years and said nothing about the period between 1983 and 1988. The omission was unfortunate. He would like to know the Yugoslav Government's view on the de jure and de facto scope of the application of the Covenant under the current rapidly evolving situation in the country, and how a public emergency under article 4 would be defined in general terms and not merely in relation to developments in Kosovo.

5. Miss CHANET, noting that in his oral introduction at the previous meeting the Yugoslav representative had quite rightly described the developments in his country in terms of civil war or inter-ethnic war, said that it was surprising that the report should deal with them in terms simply of a legal and constitutional crisis. She would appreciate fuller information on the events that had led to the recourse to force by the Government and to the war situation characterized by sieges and violence against civilians. Since the federal Government had never declared a state of emergency under article 4 of the Covenant, she wondered what had been the legal basis of its use of force, what orders had it given its army as to the military operations to be conducted, and what control it had over the military operations.

(Miss Chanet)

6. The Yugoslav representative had informed the Committee that a new draft Constitution was being drawn up governing those republics wishing to remain in the federation, and she would like to know which those republics were and what would be the status of Kosovo under the new Constitution. Also, she would like specific details on the electoral process envisaged.

7. Mr. MITIĆ (Yugoslavia) said that the crucial issue of principle in the Yugoslav crisis was the right of peoples to self-determination. To it were related the question of secession from the Federal Republic and the question of demands for self-determination from ethnic majorities within the Republics. His Government's position was that, under the Constitution and under international law, peoples and nations had a right to self-determination, including the right of secession. The peoples composing the Yugoslav federation were the Croats, the Slovenes, the Serbs, the Macedonians, the Muslims, and the Montenegrans. His Government was in the process of drafting rules for secession that would lay down the mutual rights and obligations, both domestic and international, of the Republics and the central Government. It should also be noted that the Constitution provided for Yugoslav borders common to all Republics and Autonomous Provinces and defined by common consent.

8. With regard to the situation in Slovenia, in June 1991 that Republic had tried violently and unilaterally to secede by taking over frontier and customs posts; the Yugoslav Government had responded by sending in 2,000 soldiers, mostly unarmed as the Slovenes well knew, to retake those posts. Slovenian military units had attacked the army troops and in the ensuing violence 60 persons had been killed, four fifths of them Yugoslav soldiers. He would provide documentation on the Slovenian crisis, including the Memorandum of Brioni adopted by the European Community, which stipulated that Slovenian authorities should withdraw their forces from the border posts and allow the Yugoslav authorities to reoccupy them so that the territorial integrity of Yugoslavia could be restored, and that Slovenes should resume their posts in the Yugoslav Government so that a mutually acceptable solution could be devised. The Memorandum had never been implemented and the Yugoslav troops had withdrawn from Slovenia by Presidential decision and, some said, under pressure from the army. Subsequently, the Yugoslav Constitutional Court had declared that withdrawal of federal troops from a Yugoslav republic by sole Presidential decision was unconstitutional.

9. The crisis in Croatia, on the other hand, had been precipitated by the attempt of Croatian authorities to adopt a new Constitution without the consent of the Republic's Serbian population. Acts of discrimination against Serbs had escalated into attacks by the Croatian army and Croatian paramilitary groups against Serbian villages. For the first time on Yugoslav soil, Yugoslav army units had then been ordered to intervene between the two conflicting sides, and they had been attacked by the Croatian military, which had proceeded to commit atrocities verging on genocide. The Presidency had ordered the Yugoslav army to counterattack. His delegation would provide

(Mr. Mitić, Yugoslavia)

documentation on the Croatian crisis, including federal Government memoranda on the Yugoslav crisis and on the crime of genocide. It should be borne in mind that in the past there had been a very cruel secessionist conflict in Croatia. The recent unilateral, violent secession of Croatia could not have been dealt with simply in the courts, especially when the federal Assembly was paralysed. Unfortunately, interference by neighbouring States had only exacerbated the conflict.

10. In the cases of both Slovenia and Croatia, the truth was not black and white; and he appealed to the Committee to study the situations in all their complexity, referring both to the documentation his delegation was furnishing and to the testimony of impartial sources. The Yugoslav army was not a cruel, destructive invader. Nor was it so much a question of the rights of individual Yugoslav republics as a question of principle involving the right of peoples to self-determination.

11. The principle of self-determination was defined in a few key international documents: in article 1 of the Covenant; in the Helsinki Final Act of the Conference on Security and Cooperation in Europe; in paragraph 6 of General Assembly resolution 1514 (XV), a resolution which, however, had been adopted in the context of colonialism; in the relevant section of the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV)); and in the Committee's own jurisprudence, since paragraph 6 of general comment 12 [21] on article 1 of the Covenant linked the right of self-determination to the duty to refrain from interfering in the internal affairs of other States.

12. Those provisions of international law had not been respected. In particular, the European Community and certain other members of the United Nations had put pressure on the Government of Yugoslavia.

13. One example of how complex Yugoslavia's difficulties were was the problem which had arisen a year earlier over the election of the President of the State Presidency. The candidacy of Mr. Mesić, of Croatia, had been opposed since he had been instrumental in arranging imports of weapons to arm Croatian forces and had been bent on the dismemberment of the country. Mr. Mesić had, however, ultimately been elected. The European Community had sent a high-level delegation to monitor the situation. The outcome of that election had been war, conflict and secession. The actions of the federal Government against Croatia must be seen against that background.

14. With regard to the question of implementation of the Covenant by the Government of Yugoslavia, he said that the Government was aware of its responisiblities, which were on a higher level than those of the other parties in the conflict. Nevertheless, the Yugoslav Government had to accept the reality that neither the federal Government nor any other entity was in control of the whole territory. Croatia and Slovenia had been recognized by

(Mr. Mitić, Yugoslavia)

more than 50 States. The Government of Yugoslavia did not wish to stand in the way of their independence, but had a duty to solve the problems that had arisen in connection with their secession. One such issue was that of the rights of minorities in the new States. More than 6 million Yugoslavs could trace their origins to more than one republic, and whereas before all elements in their backgrounds had been subsumed under Yugoslav nationality, now they would have conflicting claims.

15. The question of Bosnia and Herzegovina was critical. The republic was peopled by Muslims, Serbs and Croats, all with conflicting wishes. The Serbs did not want independence, whereas the Muslims did. Paramilitary groups were operating, and conflict was spreading. International recognition of Bosnia and Herzegovina had done nothing to help.

16. With regard to the status of constitutional rights, in the last month alone more than 250 legal instruments affecting the Constitution had been adopted by the various republics. Many were not in accordance with the Yugoslav Constitution, but, as with regard to application of the Convention as a whole, the Government could not affect decisions in territory beyond its control.

17. The secessionist republics had stated their intent to be bound by international law, given which there should not be any difficulty in ensuring the continued application of the Covenant in territories outside the de facto control of the Government of Yugoslavia. The most obvious area of difficulty was that of minority rights, but the whole issue of the rights and duties of the secessionist States needed attention. A solution must be found either through acceptance by the secessionist republics of the obligations assumed by the Government of Yugoslavia, or through the direct assumption by those republics of those obligations. It seemed, however, that all human rights instruments to which the Government of Yugoslavia was party would continue to apply in either eventuality. Efforts were currently under way to find a compromise solution to the questions surrounding succession.

18. A related difficulty was that of economic relations between the separate elements of Yugoslavia, which previously had formed an economic whole. The imposition of sanctions by the European Community had many problems; economic links had been severed, and enterprises, in the main, were not cooperating.

19. He agreed that the report was somewhat sketchy concerning the question of self-determination. The formal situation was that there were six republics comprising the federation. The Yugoslav Parliament had recently been engaged in the drafting of legislation relating to self-determination, but all activity had been paralysed.

20. The Government of Yugoslavia recognized the need to address the issues raised by the Human Rights Committee and to solve, in cooperation with the republics, all the other current difficulties besetting Yugoslavia. Whether

(Mr. Mitić, Yugoslavia)

republics had seceded or not, the need for common solutions to common problems remained. For example, the only entities capable of dealing with matters relating to airspace were at the federal level.

21. Many people blamed the Yugoslav Government for excesses committed by the army during what was a state of disintegration, but they tended to overlook the fact that the Government included both Croats and Slovenes. It was wrong to refer to the Yugoslav army as Serbian or to Serbian irregulars in Croatia as chetniks; that name had been used during the Second World War to refer to royalists who had collaborated with the Germans against the partisans who were seeking to build a new Yugoslavia. All volunteers were under the control of the Yugoslav army; admittedly the army had not always been able to control its own units, with the result that there had been some regrettable incidents involving destruction of villages, killings and acts of cruelty. Those responsible must be punished and a recurrence of such crimes must be prevented. Although it was difficult for the Government to control the army's activities, given the latter's state of disintegration, the Government accepted responsibility for the army's actions and was taking steps accordingly.

22. Paragraph 4 of the report called for attaining internationally recognized standards in the field of the protection and realization of the acknowledged freedoms and rights of citizens. Yugoslav legislation in the field of human rights prior to the 1989 amendments had been in accordance with international standards in all but two respects: the independence of the judiciary and the selection of judges on the basis of their moral and political suitability.

23. The death penalty had not been abolished in Yugoslavia but had been applied in a very limited way. Indeed, in Serbia there had been no executions for 30 years, and it was hoped that they new constitution would abolish capital punishment altogether.

24. With respect to the question of self-determination and Yugoslavia's failure to recognize the Republic of Kosovo, he noted that nowhere in the world were ethnic minorities granted an unrestricted right to self-determination. If national minorities were to be allowed to secede all States would suffer, not just Yugoslavia. The Secretary-General had been notified of all measures taken by Yugoslavia with regard to Kosovo.

25. With regard to the dismissals of public officials in Kosovo, the persons concerned had not used the remedies at their disposal, namely, the regular courts. Only six ethnic Albanian workers had sued over the previous year as compared with 24 Serbs, despite the fact that many more Albanians than Serbs had been dismissed. Albanians were not represented in the Kosovo government because they had boycotted the elections. If new national elections were held, he hoped the ethnic Albanians would participate. They could not hope to have any influence if they were not represented.

(Mr. Mitić, Yugoslavia)

26. Schools had been closed for budgetary reasons not only in Kosovo but throughout Serbia. The problem in Kosovo concerned the curriculum. The Albanian minority was refusing to send its children to school on account of the curriculum. There had been a proposal for an international symposium organized by an Austrian consortium on the education of national minorities.

27. On the question of the future position of autonomous provinces in Serbia, the Serbian government and a group of experts who were working on a draft constitution had not rejected the idea of providing for autonomous provinces. However the position of such provinces might be different from what it had been under the 1974 constitution, which had been much criticized, because it had been felt that the rights granted had been widely abused. A political decision would be involved at the level of the Serbian government, so that it was very important for ethnic Albanians to take part in elections.

28. He assured the Committee that in the new constitutions of Yugoslavia and the republics all international obligations of Yugoslavia in regard to ethnic minorities and human rights would be respected.

29. With regard to the compliance of the secessionist Republics with international instruments, Croatia and Slovenia had committed themselves to accepting their obligations. The implementation of any such instruments was, however, the responsibility of the respective States.

30. It was not entirely correct to say, as Mr. Müllerson had done, the constitution related to a Serbian state within the Yugoslav federation, and certain emergency provisions were provided that would come into play if the federation ceased to exist.

31. He agreed with Mr. Prado Vallejo that self-determination was a crucial element of the Yugoslav crisis. If a people was prevented from exercising its right of self-determination, that was a human rights violation; however, if that right was asserted unilaterally that, too, was a violation of human rights and of international law. He emphasized that such was not just the opinion of the Yugoslav Government, but a broad consensus in international law. The right of self-determination must be exercised by constitutional means.

32. On the question of prevention or suspension of acts of the Republics by the Constitutional Court, clearly, if the federal Government had no control over certain territories, it was impossible to implement any decision of the Constitutional court in respect of those territories.

33. Yugoslavia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and its national legislation contained adequate protections against such practices. Again, the problem was not one of legislation but of implementation.

(Mr. Mitić, Yugoslavia)

34. It was true that, according to the Constitution of Yugoslavia, it was the duty of the Parliament and the President to proclaim a state of emergency. No state of emergency had been declared in the case of the armed conflict in Croatia, and human rights had not been formally limited; those rights had already been endangered by the fact of armed conflict itself.

35. The new draft constitution provided for autonomous provinces. As a first step, a parliament must be elected, which would then proceed to ratify the Constitution. The existing Constitution and the Constitution of Serbia allowed for a popular referendum, but it was still unclear whether one would be held.

36. Mr. WENNERGREN noted that the secessionist republics had solemnly declared that they would abide by all international instruments acceded to by Yugoslavia. It followed, therefore, that the Covenant would be implemented in the breakaway States as well. Since the Socialist Federal Republic of Yugoslavia had been unable to report on its implementation in territory outside the control of the central Government, he wondered whether it would be logical to request reports from the individual republics.

37. Mr. MITIĆ (Yugoslavia) said that, since those republics were not members of the United Nations, the Committee could not request reports from them as they were not formally parties to the Covenant. The outcome of the conference on Yugoslavia was still unclear, but it could result either in four completely independent States, or an economic association of four former Yugoslav States without international personality. He could see no legal basis for asking territorial authorities for reports. Some of the republics had cooperated to varying degrees in supplying information, which had been included in the report. It would be difficult to make generalizations concerning the behaviour of all the secessionist republics. No major problems had arisen with regard to Slovenia, and the Yugoslav army had withdrawn peacefully from Macedonia after its proclamation of independence. The situation had been quite different with regard to Croatia and Bosnia-Herzegovina, however. In his personal opinion, religious intolerance was supporting the existing nationalist rivalries, which was one reason for the varying behaviour among the republics.

Right to life, liberty and security of the person, treatment of prisoners and other persons deprived of their liberty and right to a fair trial (articles 6, 7, 9, 10, 11 and 14 of the Covenant) (section II of the list of issues)

38. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of Yugoslavia, namely: (a) nature and extent of the "flagrant violations of human rights" occurring during military operations, and concrete measures being taken to ensure strict compliance with articles 6 and 7; (b) details on investigations carried out in respect of those violations, particularly regarding cases of torture, disappearances and killings during the military operations, and action taken to punish those

(The Chairman)

found guilty and to avoid recurrence; (c) complaints, if any, concerning human rights violations by the army and paramilitary groups and action taken or to be taken to investigate those cases and to punish the culprits; (d) information on arrangements for efficient supervision of places of detention and on procedures for submitting and investigating complaints, and whether independent and impartial procedures existed under which complaints could be made and investigated about ill-treatment of individuals by the police, members of the security forces, or prison officials; and (e) concrete measures taken since the examination of the second periodic report to strengthen judicial independence and the effects of the current crisis on that situation.

39. Mr. MITIĆ (Yugoslavia), referring to section II (a), said that the crimes against humanitarian law included cruelty, atrocity, murder, rape and violence against the civilian population. He would provide documentation of those violations to the Committee. With regard to section II (b), all cases had been investigated by a committee established specifically to investigate crimes against humanitarian law and genocide. Concerning section II (c), more than 30 members of the army or paramilitary groups were in prison for human rights violations, and many other cases were under investigation. The incidents of cruelty and atrocity which had occurred were the reason the Government had created a special committee and had not left it to the judicial authority.

40. With regard to section II (d), in the territory under Yugoslav Government control, all interested groups, including NGOs and the International Committee of the Red Cross, had been invited to inspect the centres and had offered advice and assistance, especially concerning prisoner exchanges. An impartial procedure for complaints regarding ill-treatment existed through the courts and the special investigation committee and there were also national groups and scientific institutes, which were attempting to determine the scope and provide scientific and criminal evaluation of the crimes.

41. Concerning section II (e), the armed conflict had, of course, affected the situation in Yugoslav territory and normal court activity, but following the situation had improved somewhat since the cease-fire had gone into effect. The special investigation committee would improve the situation further.

42. Mr. FODOR, referring to article 6 of the Covenant, asked whether there were any reliable statistics on summary executions and the number of civilians killed during the armed conflict. The last sentence of paragraph 45 of the report needed some clarification as to what harmonization was required and how it would be accomplished. Paragraph 49 mentioned amendments to the Law on Criminal Procedure (LCP), but he would be interested to hear what current legal provisions were applicable to the powers of law enforcement agencies. He wondered if a set time limit was established for appearance before an investigating judge or if it was solely at police discretion, and whether a warrant was required for arrest.

(Mr. Fodor)

43. He wondered whether the absence of any reference in the report to articles 10 through 16 was due to the fact that nothing had changed in that regard since the second periodic report, or to the recent violent events.

44. Mr. ANDO said, with regard to article 14, as discussed in the second periodic report, that it would be helpful to have further details on intentions to strengthen the independence of the judiciary and on the return to a normal situation after the military conflict had ended.

45. Mr. HERNDL said that he shared Mr. Fodor's concern regarding articles 10 through 16. The delegation had said that the Government was responsible for the actions of the army, but was not responsible for events in territories outside its control. The Yugoslav army had conducted operations in those territories, and therefore the Government was responsible for the army's actions in those locations. He wondered if the army had fully respected the rights set forth in articles 6 and 7 and what measures had been taken to prevent violations of those rights in the future.

46. The Committee wished to ensure that what had happened would not recur in new areas and wondered if the Government was aware of its responsibilities to safeguard the rights of all persons under its jurisdiction.

47. Mr. AGUILAR also expressed concern about implementation of articles 6 and 7 and the jurisdiction of the Yugoslav army in the breakaway territories. He would welcome further explanations regarding paragraph 43 of the report and the proposed amendment to the Constitution limiting the application of capital punishment. He would like to know what had led the Government to propose such action, and requested more examples of cases in which capital punishment could be imposed.

The meeting rose at 6 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1146th MEETING

Held at Headquarters, New York,
on Thursday, 9 April 1992, at 10 a.m.

Chairman: Mr. POCAR

later: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR (Chairman)

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Yugoslavia (continued)

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The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (continued) (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitić and Mr. Strugal (Yugoslavia) took places at the Committee table.

Constitutional and legal framework within which the Covenant is implemented, state of emergency and self-determination (articles 1 (1), 2 and 4) (section I of the list of issues) (continued)

Right to life, liberty and security of the person, treatment of prisoners and other persons deprived of their liberty and right to a fair trial (articles 6, 7, 9, 10, 11 and 14 of the Covenant) (continued)

2. Mr. MITIĆ (Yugoslavia) said that, while the Yugoslav army had committed crimes against humanitarian law, it had not carried out any summary executions. Unfortunately, because of the military conflict, no statistical data were currently available. A federal commission was investigating crimes committed by the Yugoslav army, and Yugoslavia would send the relevant information to the Committee as soon as it became available.

3. With respect to the abolition of capital punishment in Slovenia, mentioned in paragraph 45 of the report, he said that he did not know why such information had been included in the report. Perhaps the author had wished to point out that Slovenian criminal legislation differed from federal law, which permitted the death penalty. The Yugoslav Government was taking measures to abolish or limit the application of capital punishment. Proposals had been made to authorize capital punishment only for the gravest forms of criminal acts perpetrated during a state of war or immediate danger of war, and to limit its application in other circumstances by requiring a panel of seven judges to be unanimous in passing the death sentence. However, it would not be possible to amend the national legislation until a new parliament was elected.

4. Before it had been amended, the Yugoslav Constitution had given the police the authority to detain individuals for 24 hours. That provision had been abolished. Under article 16 of the Constitution of the Republic of Serbia, a person suspected of having committed a criminal offence could be detained and held in confinement on the basis of an order issued by a competent court of law, only when such detention was indispensable for the conduct of criminal proceedings or for reasons of public safety. The length of detention must be kept to the shortest possible time. Detention ordered by the court of first instance could not exceed three months from the date of arrest, and it could be extended by a decision of the Supreme Court for

(Mr. Mitić, Yugoslavia)

another three months. If, upon the expiry of the second three-month period, no charge had yet been filed, the accused would be released.

5. The independence of the judiciary had been strengthened by amendments to the federal Constitution and also by the new constitutional law in the various republics. The practice of re-electing judges had been abolished, and judges were elected to permanent posts. Moreover, judges of the lower courts were no longer elected locally. All judges were elected by the parliament of the Republic.

6. The Yugoslav Government did not seek to evade its responsibility for controlling the actions of the armed forces. Under the Constitution, the President of Yugoslavia bore the main responsibility for the armed forces. The Yugoslav Government was endeavouring to prevent genocide and other violations of humanitarian law and to punish those responsible for such crimes. The competent bodies were investigating all members of the armed forces who had been accused of such violations.

7. Miss CHANET said that, while Mr. Mitić had stated that there had been no cases of extrajudicial executions, he had acknowledged that the civilian population had been subjected to atrocities, and that there had been cases of pillage, rape and murder. The Yugoslav delegation should indicate what acts had been committed by the army and paramilitary forces, particularly in the light of the provisions of article 6 of the Covenant.

8. The Yugoslav delegation had informed the Committee that 30 people had been detained for alleged human rights violations. That figure seemed quite low and seemed to indicate that a considerable number of persons had not been punished. She wondered what had prevented a full-scale investigation of all persons suspected of such violations.

9. A number of non-governmental organizations, the International Committee of the Red Cross (ICRC) and Amnesty International had visited a number of prison camps, and there had been reports that elderly people and women were among the detainees. Moreover, some detainees had allegedly been subjected to ill-treatment and torture, and a number of them had lost their eyesight. The Yugoslav delegation should state whether or not it considered such information to be accurate, and should also indicate what measures the Yugoslav Government intended to take to prevent acts of torture.

10. Mr. MITIĆ (Yugoslavia) said that, with respect to torture and the right to life, Yugoslavia had ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The full responsibility for human rights violations committed by members of the army and paramilitary units lay not with the army itself but with the individuals who had perpetrated such crimes. It was almost impossible for the army to prevent human rights violations by members of the armed forces, reservists and volunteers. There had been a great deal of propaganda against the Yugoslav

(Mr. Mitić, Yugoslavia)

army, and he cautioned the Committee not to rely on such one-sided information. The Committee should attach greater importance to the impartial reports prepared by the observer missions of the European Community and the United Nations.

11. All the prison camps had been visited by ICRC representatives, and he encouraged the Committee to consult reports prepared by ICRC and a number of intergovernmental bodies, including United Nations bodies.

12. Mr. SADI said that, instead of dismissing the allegations made by Amnesty International out of hand, the Yugoslav Government should investigate them and inform the Committee whether or not they had any basis in fact.

13. Mr. MITIĆ (Yugoslavia) said that the Yugoslav Government had not rejected the allegations made by Amnesty International, and it would investigate all cases of human rights violations mentioned in the Amnesty International report.

Freedom of movement and expulsion of aliens, right to privacy, freedom of religion, expression, assembly and association, and right to participate in the conduct of public affairs (articles 12, 13, 17, 18, 19, 20, 21, 22 and 25 of the Covenant) (section III of the list of issues)

Non-discrimination, equality of the sexes and rights of persons belonging to minorities (articles 2 (1), 3 and 27 of the Covenant) (section IV of the list of issues)

14. The CHAIRMAN read out section III of the list of issues concerning the third periodic report of Yugoslavia, namely: (a) information on any special limitations and restrictions on the exercise of freedom of movement, the right to privacy, freedom of religion, expression, assembly and association, and the right to participate in the conduct of public affairs in the light of the current situation in Yugoslavia, and the compatibility of such limitations and restrictions, if any, with the relevant provisions of the Covenant; and (b) information on controls exercised under the current circumstances on freedom of the press and the mass media, including possible censorship.

15. He read out section IV of the list of issues, namely: (a) clarification of the concrete measures that had been adopted to eliminate the possibility of repression and discrimination based on ethnic, religious or political affiliation, which reportedly were permitted in the legal system of certain republics; and (b) information concerning the situation of ethnic, religious and linguistic minorities in the various republics, and measures taken by the Government to promote the enjoyment of their rights under article 27 of the Covenant.

16. Mr. MITIĆ (Yugoslavia) said, with reference to section III (a) of the list of issues, that there were no restrictions on movement under the Yugoslav provisions in force, although the armed conflict had inevitably caused some rights and freedoms to be limited or, at least, threatened. Those limitations had resulted from the abuse of the legal provisions by members of the military or paramilitary, or by individuals acting on their own authority, and were not officially authorized.

17. Nearly all the constituent republics had improved their legislation on the rights covered under section III. The new provisions in the constitutions of the republics were more liberal and placed no restriction on the freedom of movement. For obvious reasons, the movement of persons had been restricted during the armed conflict in areas of direct hostilities.

18. An obstacle to such movement had been created, however, by the new international frontiers between the republics. The Yugoslav Government had not formally recognized the independence of those States but it was prepared to accept realities and believed the problem should be settled through negotiations with the republics which had become independent.

19. The right to privacy was guaranteed in almost all the new constitutions of the republics in accordance with European standards. Articles 18 to 21 of the Constitution of the Republic of Serbia contained provisions guaranteeing the right to privacy, the security of personal correspondence, the secrecy of personal data and the inviolability of the home.

20. Freedom of religion was more liberally protected in all the new constitutions of the republics. Where former constitutions had not explicitly permitted charitable work by religious communities, the right of such communities to conduct charitable activities and publicity work were now expressly guaranteed. Previous restrictions on the exercise of religion within the army had been abolished by new provisions on the rights of members of the Yugoslav armed forces. Religious communities had always enjoyed access to the print media, but not to television and radio, and such access had also been guaranteed under the new constitutions. Church members had become very visible, campaigning on television and radio and, where previously there had been a very rigid division between State and church, all the current political parties were seeking the support of religious leaders, giving the role of the church a possibly exaggerated status. There had even been efforts by some religious leaders to conduct political activities but such abuses of their position did not constitute a basis for limiting their rights.

21. Yugoslavia had three main religious communities - Orthodox and Catholic Christians and Muslims - and many smaller communities, particularly in the province of Vojvodina. There were isolated instances of intolerance among members of those communities, which could only be solved through democratic respect for the rights and freedoms of all.

(Mr. Mitić, Yugoslavia)

22. All the republics had adopted new legislation on the freedom of assembly and association, which accorded fully with European standards and contained no special limitations. There was one federal law on the formation of parties and associations at the federal level: a minimum of 100 people was required to establish a party.

23. With regard to the right to participate in the conduct of public affairs, he said that the legislative situation in Yugoslavia was fully in line with all European constitutions and legislations. Only in Kosovo had any problems arisen in that respect, since the majority of the Albanian population did not participate in public affairs in the province. That lack of participation was due, however, not to any limitation of their right but to a deliberate boycott policy. In consequence, it had been necessary to suspend the parliament of Kosovo and it was now up to the Albanians to take part in elections for the local administrative bodies, to be held later in 1992. Failure to do so would only further harm the interests of the Albanian population itself.

24. Turning to freedom of expression, he said that there was no censorship of the mass media and any obstruction of the dissemination of information was prohibited, unless it could be established that such information was intended to undermine the established constitutional order, to foment violence or racial hatred or to serve other unconstitutional ends.

25. There were problems with public-funded, or State, media, causing complaints that they exercised a monopoly in certain areas and were used by the ruling parties for propaganda purposes. In some republics, in order to overcome that problem, it had been decided that the editorial board and management of such organs would be elected by parliament. While no such problems arose with privately owned media, of which there were a considerable number in Yugoslavia, the issue of the use of State media by the ruling party was an intricate one and had also caused problems in other countries, such as Austria.

26. He said that the issue addressed in section IV (a) had been covered in his introductory statement. He was unable to report any positive developments over the last few years in the area of government measures to protect minorities.

27. Mr. HERNDL, referring to section III, said that the issue of trade union rights, related to article 22 of the Covenant, was also covered by International Labour Organisation (ILO) Convention No. 87 of 1948. ILO had informed the Committee of complaints brought by the Union of Independent Trade Unions of Kosovo, against the Yugoslav Government in February 1991, alleging violations of labour rights, namely, the refusal by Yugoslavia to register Kosovo unions or to admit those unions to the collective bargaining process and the unfair dismissal of union members on the grounds of industrial action and their refusal to join Serbian trade unions. Although those complaints

(Mr. Herndl)

were currently being reviewed by an ILO committee of experts, he wondered whether the delegation could furnish the Committee with further information.

28. With reference to section IV, he acknowledged Yugoslavia's contributions to international efforts to protect the rights of minorities but regretted that, at the national level, the Government's record appeared to be much less impressive. Referring to the delegation's statement that the failure by the Albanian minority to participate in public affairs was due to its own decision to boycott the organs of public administration, he wondered what steps the Yugoslav Government was taking to secure the cooperation of that minority. Such actions as the suspension of the administration, the closure of the Albanian-language schools and university, the closure of the only Albanian-language newspaper and of the Albanian radio and television stations and other measures against Albanian cultural institutions, such as the replacement of Albanian place-names with Serbian names, cast doubt on whether Albanian citizens enjoyed equality with other nationalities in Yugoslavia. He wondered what measures the Government was taking to resolve those issues.

29. Finally, with reference to the issue of the State monopoly of television and radio in Austria, mentioned by the delegation, he said that the matter had been extensively discussed by the Committee during its forty-third session when the second periodic report of Austria had been considered and that it was currently under review in Austria.

30. Mr. SADI asked, with reference to the delegate's statement earlier about discrimination against "Croats, Serbs and Muslims", whether Muslims were considered an ethnic minority in Yugoslavia, and not a religious community. As formulated, the statement had given the impression that there might be discrimination on religious grounds. While he conceded that, in practice, there would always be a certain measure of religious intolerance and discrimination on religious grounds, he wondered what steps the Yugoslav Government was taking to reduce tension between religious communities in the country.

31. Mr. Aguilar, Vice-Chairman, took the Chair.

32. Miss CHANET, referring to article 12, paragraph 2, of the Covenant, concerning the right to emigrate said that the Yugoslav delegation should explain the procedures to be followed by a Yugoslav national who wished to leave the country. In particular, she would appreciate information on the conditions for obtaining a passport whether an exit visa or an invitation from abroad were required, and whether the same requirements existed in all the republics.

33. Mr. FODOR said that during the inter-ethnic war, with the occupation of some parts of Croatia by insurgent forces and the Serbian army, nearly 20,000 Croats and Hungarians residing in Croatia had left their homes and farms and had sought refuge in Hungary. Serbian officials in the occupied areas,

(Mr. Fodor)

claiming that the refugees had abandoned their properties, had prevented them from returning and had settled Serbians in their homes. Details should be provided on the measures adopted by the Serbian authorities to prevent further violations of the rights of displaced people and to find solutions in cases where homes had been taken from their rightful owners. It would also be interesting to learn what the Yugoslav Government's policy was with regard to people who had sought temporary refuge abroad, and whether measures were envisaged to facilitate their return.

34. With regard to article 24 of the Covenant, the reporting State should indicate what measures had been adopted to ensure the adequate protection of children in areas affected by military operations.

35. According to his information, the proportion of minorities conscripted into the Serbian army was higher than their percentage in the general population; if discrimination of that nature did exist, he wished to know what remedies were available.

36. He would be grateful for clarification of reports that the draft law on education in the Republic of Serbia envisaged further restrictions on teaching in minority languages, to the point where the use of Hungarian in the schools would virtually disappear.

37. In general, he would appreciate additional information on the intentions behind the endeavours of the Serbian authorities to limit the rights of minorities.

38. Mr. MÜLLERSON said that the Yugoslav representative might have misunderstood him. He did not support self-determination for minorities; on the contrary, the right to secession was not guaranteed under international law, although the international community might recognize such a right under exceptional circumstances.

39. The protection of minorities depended to a great extent on the inter-ethnic situation. He would be grateful if the Yugoslav delegation could clarify a report published in the previous day's edition of The New York Times, indicating that the Serbian army had ordered air strikes on several Croatian towns in retaliation for an assault by Croatian militiamen on Serbian airbases. He failed to understand how such an attack, if indeed it had occurred, could be in conformity with international law. It would also be useful to learn whether there were any minorities in the Autonomous Province of Vojvodina.

40. Mr. WENNERGREN said that, according to some reports, drug-trafficking networks had been established in Yugoslavia, with the proceeds being used to arm combatants in the civil war. If that was true, he would be grateful for information on any measures adopted by the Government to combat drug trafficking.

41. The Chairman resumed the Chair.

42. Mr. MITIĆ (Yugoslavia), replying to the questions raised by Mr. Herndl, concerning trade union rights in Kosovo, said that, while he did not have information on all aspects of the problem, he assumed that the International Labour Organisation had adequate machinery to deal with it. In Yugoslavia, freedom of association was guaranteed by both federal law and the laws of the republics; all trade unions were free to operate. With regard to the Union of Independent Trade Unions of Kosovo, which consisted solely of ethnic Albanians, it had begun a dialogue with the Serbian Government concerning the issue of the dismissal of ethnic-Albanian workers; however, the said organization had attempted to lump all the cases together, whereas the Serbian authorities had insisted upon treating each case separately. Many of the ethnic Albanians had ignored the judicial remedies for wrongful dismissal. For practical reasons, it was impossible to adopt a blanket approach to the dismissals, since in some cases, the workers had been reinstated in their posts, while in other cases, they had been replaced.

43. With regard to the alleged inconsistencies in the Yugoslav Government's attitude towards minorities at the international level and internally, there was a misunderstanding about the situation in Kosovo, where the Albanian minority did not recognize the authority of the State. In response, official circles in the Serbian and Yugoslav Governments declined to make any efforts on behalf of the Albanians. The Committee must clarify its own position in that regard. The Albanian minority in Kosovo had insisted on the right to self-determination and had illegally proclaimed the Republic of Kosovo, which the Yugoslav and Serbian Governments, as well as the Republic of Slovenia, had refused to recognize. While the Yugoslav and Serbian Governments had no intention of ignoring the internationally guaranteed rights of minorities, it was necessary to specify what those rights were.

44. The issue of education had also been discussed between the Serbian Government and representatives of the 14 alternative parties in Kosovo. The Albanian minority had objected to certain school programmes on the ground that not enough importance had been attached to Albanian history and culture; however, experts had been of the view that the programmes were well balanced.

45. Although the Serbian Government had proposed negotiations with a view to solving all the outstanding problems, representatives of the Albanian minority had stated that they would participate only if the Serbian Government recognized the Republic of Kosovo, which the Serbian Government was unwilling to do.

46. As to the question of name changes, there was a trend throughout the country towards changing the names adopted under communist rule; no specific measures had been envisaged against Albanian institutions in Kosovo, although some abuses might have occurred.

(Mr. Mitić, Yugoslavia)

47. The number of pupils in school had decreased slightly because of the State's financial position. Previously, education in the underdeveloped regions of Yugoslavia, including Bosnia - Herzegovina, Montenegro, Macedonia and Kosovo, had been financed partially through a special fund - 50 per cent of which had been allocated to Kosovo - and partially through a federal budget grant. Those resources were no longer available; the Serbian Government had been forced to rationalize the school system, and a number of primary and secondary schools had been closed.

48. It should be noted that there were approximately 2 million ethnic Albanians in Kosovo, and 25,000 students of Albanian origin attended university. In comparison, in the Republic of Albania, there were 19,000 university students out of a total population of 3 million.

49. With regard to the Albanian-language television station and the newspaper which had been forcibly shut down, the newspaper had been closed because it had been financed by the Government, but there were 24 other Albanian-language newspapers in Kosovo. The television station was broadcasting several hours a day, and there were also Albanian-language broadcasts on Belgrade television.

50. Turning to the question raised by Mr. Sadi, he said that Muslims were one of the six Yugoslav nations and had been recognized as such 30 years earlier. Muslims as a nation were different from Muslims as a religious community; there were more than 4 million people of the Muslim faith in the country. The Muslim nation was centred in Bosnia; its members spoke Serbo-Croatian.

51. On the question of relations between different ethnic and religious groups, he said that the Yugoslav Government had made great efforts in recent years to create an atmosphere of tolerance and cooperation, at a time when the inter-ethnic situation was deteriorating, and had never sought to discriminate against any religion or religious community. The legal position was quite clear, with all religions and ethnic groups being equal before the law. He recalled that some years ago the Committee had censured Yugoslavia for the severity of its laws against ethnic intolerance and pointed out that the current situation appeared to vindicate that rigorous approach.

52. In reply to Miss Chanet's question concerning the freedom to leave the country under article 12, paragraph 2, of the Covenant, he said that Yugoslavia was a country with open frontiers and had sought to conclude bilateral treaties with all States willing to abolish visa formalities. There were no specific obstacles to obtaining a passport and nearly all citizens had one. Under the law, passports could be refused because of obligations relating to families or the courts, or on grounds of national security. Previously, the authorities had not needed to give reasons for refusing passports on grounds of national security, but a ruling by the Constitutional Court now required them to do so. During the armed conflict, the Government had imposed restrictions on the freedom of movement of male citizens between

(Mr. Mitić, Yugoslavia)

the ages of 18 and 60 eligible for military service, who required a certificate from the authorities in order to leave the country.

53. Replying to Mr. Fodor's question concerning the problem of people who had left the country in order to flee the armed conflict or avoid military service, he said that the Government wanted all refugees to return home and was collaborating with the Office of the United Nations High Commissioner for Refugees, the International Red Cross, and other non-governmental organizations in providing assistance. Discussions were continuing as to whether those who had left in order to escape military service should be prosecuted on their return. Two opposing proposals were before parliament, one calling for an amnesty and the other advocating prosecution. The matter remained open and was for parliament to decide, although he pointed out that those who had remained in the country and had been prosecuted for evasion of military service had been punished by fines rather than prison sentences.

54. With regard to the problems of displaced persons, particularly those whose homes had been seized by others, he said that everyone had the right to return to his home. The territory in question, Krajina in Croatia, had been assigned special status and was to be placed under the control of the United Nations peace-keeping troops, which would provide a guarantee of safe return. Needless to say, many people had not yet returned because of the continuing armed conflict. The Government would strive to help all those who so desired to return home, whether from abroad or from other republics.

55. With regard to article 24 of the Covenant, he said that legal provisions existed to protect children during armed conflicts and Yugoslavia was also bound by the provisions of various international conventions. Although efforts had been made to evacuate children and provide them with temporary homes, many children had fallen victim to the armed conflict and a high percentage of refugees were children.

56. With regard to the question of conscription, an investigation had been conducted and had produced no evidence to substantiate claims that a disproportionate number of conscripts had been recruited from among the Hungarian minority. With regard to the Serbian draft law on education, he said that there were no plans whatsoever to abolish the teaching of Hungarian in secondary schools. He stressed that the Hungarian language was widely used in all areas of public life. He felt that the representatives of the Hungarian minority were exaggerating their problems and that claims of discrimination were unfounded. The new Serbian Constitution recognized Vojvodina as an autonomous province and the rights of all minorities would continue to be respected.

57. It was not true that the Serbian authorities had sought to limit minority rights. The Government was aware of its obligations under international treaties and also realized that a normal community could not develop unless it

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satisfied the aspirations of all sections of the population by guaranteeing the rights of ethnic groups under national and international law.

58. He agreed that inter-ethnic relations were of crucial importance to the human rights situation and that the deterioration in those relations in the country had created problems for the implementation of human rights, especially in the case of minorities.

59. He said that, according to the Yugoslav news agency, the Government had denied newspaper reports that bombing raids had recently been carried out against the towns of Siroki Brijeg and Citluk in Bosnia-Herzegovina.

60. In reply to questions concerning drug trafficking and arms dealing in the country, he said that the Government was cooperating with Interpol in an effort to combat those activities. However, many of the activities were taking place outside the present territory of Yugoslavia and were beyond the Government's control.

The meeting rose at 1.10 p.m.

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Forty-fourth session

SUMMARY RECORD OF THE 1147th MEETING

Held at Headquarters, New York,
on Thursday, 9 April 1992, at 3 p.m.

Chairman: Mr. POCAR

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The meeting was called to order at 3.30 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Yugoslavia (continued) (CCPR/C/52/Add.9)

1. At the invitation of the Chairman, Mr. Mitić (Yugoslavia) took a place at the Committee table.

2. The CHAIRMAN said that Committee members would make concluding observations on the third periodic report of Yugoslavia.

3. Mr. SADI said that the report and the presentation by the delegation had made the Committee more aware of the difficulties Yugoslavia was facing in implementing the Covenant. The issues of self-determination and excesses committed by the military forces none the less remained areas of concern.

4. He could sympathize with the proposition that the right to self-determination in Yugoslavia could not be seized by violent means but rather must be exercised within the constitutional framework. The delegation had said that it subscribed to texts such as General Assembly resolution 1514 (XV), yet, in an apparent contradiction, it had also stated that self-determination could not be pursued if it meant the dismemberment of certain nations. The latter statement also conflicted with the relevant articles of the Covenant. If the Government really did subscribe to resolution 1514 (XV), it should not be opposed to self-determination of peoples as long as that right was pursued within a legal framework. Its true position needed to be articulated, and the people needed clearer signals on how they could pursue their aspirations. In the Committee's view, the right to self-determination was guaranteed in the Covenant.

5. The Government of Yugoslavia had admitted that the military forces had committed excesses, but the Committee had yet to hear the Government express its commitment to investigate those allegations and send the findings to the Committee.

6. Mr. EL-SHAFEI said that, although the situation was complex, he still believed the Committee had been correct in requesting Yugoslavia to expedite presentation of its report, since a situation of non-respect of human rights guarantees could not be ignored.

7. He was especially concerned by the lack of broad guarantees, particularly of the rights set forth in articles 6, 7, 12 and 14, all the more so since the Government had been working towards reform before the outbreak of the civil war. Returning to that reform process should be a priority. He was also concerned about the country's prospects for peaceful evolution and the prevention of renewed violence. Moreover, the situation in Yugoslavia was

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bound to have a negative impact on neighbouring countries by creating refugees and problems in bilateral relations.

8. On the subject of self-determination, he wished simply to mention that Yugoslavia had been a pioneer in the adoption of minority rights declarations, and he hoped the Government could apply those principles to its own minority communities. It had served as an example to the international community in many ways, and he hoped to see it regain that important role.

9. Mr. FODOR said that, due to the secession of several republics, the central Government of Yugoslavia had reported that it had not been in a position to implement the Covenant throughout its territory. Gross violations of human rights had occurred, as a result of loss of control both of the territory and of the army. Inter-ethnic conflict had led to needless death, destruction and suffering. Not all violations could be attributed to armed conflict, however; a number of violations such as the repression of Albanians in Kosovo, had occurred in areas where no fighting had taken place. He hoped that the Serbian authorities were aware of the danger of a new outbreak of fighting.

10. The crisis could be resolved only by peaceful means, and the United Nations Protection Force in Yugoslavia (UNPROFOR) should play a major role in that regard. Positive elements noted in the dialogue with the Committee had been the commitment on the part of the Government to investigate human rights violations and abuses, and the efforts to draft a new constitution. New negative factors had also arisen, however. The Serbian Republic was becoming impatient with its minorities, and its formerly sensitive policies were becoming more severe as a result of rising nationalism. The status of the autonomous republics had been diminished. There was a risk that the proposed new constitution might ignore them entirely, and might also restrict the use of minority languages.

11. If there was any lesson to be drawn from recent events, it would be that ethnic conflict could not be resolved by violence, and that minorities could not be forced to assimilate. Respect for human rights and laws protecting the rights of minorities was an absolute necessity.

12. Mr. PRADO VALLEJO said that the fact that, despite its internal problems, the Yugoslav Government had sent a delegation to present its periodic report should be viewed as a positive sign. Committee members seemed to be in general agreement that recent events posed a danger to the principle of self-determination and respect for the rights of minorities. A civil war created particular human rights problems, but basic norms such as the Geneva Convention relative to the Protection of Civilian Persons in Time of War, should still be respected. Although the Yugoslav Government might not be able to assure implementation of the Covenant throughout its territory, it must make every possible effort to ensure that the Covenant was respected. Many

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human rights violations and abuses had been perpetrated by the Serbian army, and the authorities must investigate them, punish the guilty parties and prevent their recurrence, rather than attempt to explain them away on the grounds that they had occurred outside Serbian jurisdiction.

13. Under existing legislation, an individual could be held in detention for three months - with a possible further three-month extension without charge. That was excessively long and the provision must be reviewed.

14. The Yugoslav Government should assist UNPROFOR and make every effort to cooperate in pacification of the entire territory. Regrettably, the cease-fire had already been broken and human rights violations were continuing. The delegation had done its best to provide the Committee with all available information, but supplementary information was needed on implementation of the Covenant in domestic law and on means by which human rights could be guaranteed even during a state of civil war.

15. Mr. ANDO said that his remaining concerns related to the situation in Kosovo and that of the Muslim Slavs in Bosnia-Herzegovina, as well as the independence of the judiciary. It was unfortunate that the report had made no reference to developments in the human rights situation between 1983 and 1988. He expressed the hope that the Yugoslav Government would not abandon its efforts to comply with the Covenant and to respect the rights of all individuals under its de facto control.

16. Mr. MÜLLERSON said that it was clear that no side was entirely without blame. The Committee strongly condemned the excesses committed by secessionist groups, but none the less considered that they did not excuse those of the Government.

17. There was no right of secession guaranteed under international law; that was understandable, as international law had been created by nation-States. They would hardly sanction a right that which might be exercised to the detriment of their own territorial integrity. Neither was there any right concerning the use of force against secessionists. At the inception of the Yugoslav crisis, other European States had not recognized the breakaway republics but, on the contrary, had emphasized the need to preserve Yugoslavia's territorial integrity. It was only after the central Government had used force that they had begun cautiously to endorse the sovereignty of the republics. A similar process had occurred in the case of Lithuania vis-à-vis the Soviet Union.

18. He reiterated that ethnic minorities had no intrinsic right to self-determination, much less to secession. The question, however, was what constituted a nation and who constituted a minority. The proliferation of ever smaller States in the world was not necessarily to the advantage of the peoples concerned.

19. Mr. HERNDL emphasized that everyone recognized that Yugoslavia was dealing with a very complex situation, and that the central Government no longer controlled the whole country. Accordingly, it could not reasonably be asked to ensure full compliance with the Covenant throughout its territory. However, the central Government did remain responsible for the actions of its organs: the Parliament, the constitutional court, the administration and particularly the police and armed forces.

20. The situation of minorities with respect to the application of article 27 of the Covenant was precarious in perhaps the majority of States. However, every society, including Yugoslavia, should recognize the rights of its minorities. Those rights were in the process of being defined in the context of the Conference on Security and Cooperation in Europe; in addition, a draft declaration on the rights of minorities had recently been drawn up by the Commission on Human Rights.

21. The Committee had taken note of Yugoslavia's treatment of its minorities and hoped that that country's very complex and difficult situation could be resolved in the near future and that clear lines of responsibility could be established as to who was responsible for the implementation of the Covenant: the local authorities, the new republics, or the Belgrade Government.

22. It had been stated in paragraph 14 of the second periodic report of Yugoslavia (CCPR/C/28/Add.1) that, according to the basic principles of the Constitution, Yugoslavia should strive for international support to the peoples waging a just struggle for their liberation from all forms of national oppression and subjugation, and that support for such a struggle was in no way contrary to the principle of non-interference in the internal affairs of other States. He hoped that the new Government of Yugoslavia would live up to that statement.

23. Mr. WENNERGREN said that the issue of self-determination was one that had been much discussed in the Committee, especially with reference to Kosovo; it had also been of recent world-wide concern. The Committee's discussion might help generate new debate on the issue.

24. Yugoslavia was undergoing profound transformations, yet in answering members' questions the delegation had relied heavily on statutes and the Constitution. Real life, however, did not necessarily reflect the ideals of such texts. The situation was too fluid to assess, particularly with regard to implementation of the Covenant. The fact that a new constitution was being drafted and that a federal committee had been appointed to investigate atrocities was encouraging.

25. He emphasized that the Covenant might still be invoked in the courts of Slovenia, Croatia and the other republics for the protection of their citizens; it was the responsibility of those courts to protect individual human rights and he hoped that the secessionist States would continue to apply federal Yugoslav law.

26. Miss CHANET said that the Committee's dialogue with the Yugoslav delegation had shed light on the difficult situation facing the State party and the obstacles to the implementation of the Covenant. The first such obstacle was the loss of federal control over wide areas of the country, and the resulting inability of the State party to monitor respect for human rights throughout its territory. In connection with article 1 of the Covenant, she regretted that the right of secession implicit in the Yugoslav Constitution was not accompanied by a precise implementation procedure, which might have helped avoid the current conflict.

27. The second obstacle was the very serious actions and even atrocities that had been committed during the conflict, in violation of articles 6 and 7 of the Covenant. It was regrettable that the delegation had rejected information provided by non-governmental organizations on the grounds that it constituted "propaganda". In that context, the formation of an independent committee to investigate atrocities was helpful. The Government must examine the army's actions with a view to preventing the loss of innocent lives and regulating the use of force.

28. The third obstacle was the treatment of minorities in Yugoslavia, which ironically had theretofore been an international leader in the protection of minorities. The situation was worsening, particularly with regard to ethnic Albanians and Hungarians, and must be rectified.

29. The CHAIRMAN, speaking on the Committee's behalf, thanked the Yugoslav delegation for having, on such short notice and despite the current difficulties, presented a report on civil and political rights within the country, and for engaging in a dialogue with the Committee.

30. The Committee had raised certain issues of particular importance: self-determination, the excesses of the army and paramilitary forces, which were not justifiable even if others used the same tactics, and the protection of minorities.

31. There was still some doubt as to whether protection of human rights had been the Government's highest priority in its recent actions. It was not enough to submit information on human rights violations: efforts must be made to prevent violations or, if that was not possible, to investigate the violations and punish those responsible.

32. He hoped that respect for all Covenant rights would soon be fully ensured within Yugoslavia. Since its fourth periodic report was due in August 1993, the Committee would soon have the opportunity to review the situation once again.

33. Mr. MITIĆ assured the Committee that its comments would be duly conveyed to the Yugoslav Government, which intended to abide by all provisions of international law, including the Covenant. He reiterated the Government's commitment to investigating the excesses of all military units, including the

(Mr. Mitić)

Yugoslav army. It condemned all such crimes and would punish those responsible. The Government accepted full responsibility for all such acts.

34. With respect to the right of self-determination, he noted that some secessionist republics had committed violent acts and that other problems had arisen from their declarations of independence; the Government did not deny the right of the nations of Yugoslavia to self-determination and would not oppose its lawful exercise.

35. Referring to the question raised by Mr. Prado Vallejo, he noted that six months was the maximum time anyone could be held in detention without charge; that was similar to or less than the maximum period of detention in many nations of Western Europe.

36. Mr. Mitić withdrew.

The meeting was suspended at 4.45 p.m and resumed at 4.55 p.m.

Comments of the Human Rights Committee on the initial report of Algeria

37. Mr. NDIAYE, introducing the draft comments, said that the text reflected the views expressed by the members of the Committee. He commended the draft comments to the Committee for adoption.

Paragraph 1

38. Paragraph 1 was adopted.

Paragraph 2

39. Mr. SADI proposed that the word "emphasizes" in the first sentence should be replaced by the word "notes", adding that the word "laments", in the fifth sentence, was not quite appropriate.

40. The CHAIRMAN suggested that the fifth sentence could be reworded to read: "It also regrets the failure of the report ...". The last sentence of the paragraph might give an erroneous impression, in that the Committee itself had been delayed in its consideration of the report, and in any event, the report could obviously not refer to events taking place after its submission. It would be preferable to revise the reference in paragraph 4 to the states of emergency, to indicate exactly when they had occurred.

41. Mr. NDIAYE said that the last sentence reflected what had actually been said in the Committee, and that the Government could have submitted a supplementary report.

42. The CHAIRMAN pointed out that the Committee had not requested the State party to submit any such report.

43. Mr. SADI suggested that the difficulty might be resolved by revising the last sentence to read: "Lastly, it is unfortunate that the report, having been submitted on 5 April 1991, could not make reference ...".

44. Mr. DIMITRIJEVIĆ said that Mr. Ndiaye was correct in seeking to reflect the discussion in the Committee. The proposal made by Mr. Sadi would seem to resolve the problem, or the sentence could simply be reworded to read "could not make reference" or "could not refer".

45. Mr. ANDO endorsed the comments made by Mr. Dimitrijević.

46. The CHAIRMAN said that the last sentence would be amended to read "could make no reference ...".

47. Paragraph 2, as amended, was adopted.

48. Mr. NDIAYE pointed out that the Committee had received supplementary information from Algeria specifying which provisions of the Covenant had been derogated from under the state of emergency. In the interests of precision, the text of paragraph 2 should be amended to make it clear that the notification required under article 4 of the Covenant had indeed been made.

49. The CHAIRMAN agreed that paragraph 2 should be amended as suggested.

Paragraph 3

50. Mr. SADI said that the final sentence did not make it clear that the Ministry of Human Rights was no longer in existence, having been abolished when the democratic process had been interrupted.

51. Mr. NDIAYE suggested that the sentence should be amended to read "a Ministry of Human Rights, subsequently superseded by a national human rights monitoring body".

52. Paragraph 3, as amended, was adopted.

Paragraph 4

53. Mr. SADI said that the Committee should always remain impartial in commenting on certain sensitive and contested political situations. Paragraph 4, which began with the words "The Committee notes", went on to give what was essentially the State party's position that democratic procedures had had to be suspended in order to prevent an undemocratic takeover. The paragraph needed to be amended to make it perfectly clear that the Committee was not necessarily endorsing the State party's assertions.

54. Miss CHANET, Mr. ANDO, Mr. WENNERGREN, Mr. MÜLLERSON, Mr. SERRANO CALDERA and Mr. HERNDL said that they agreed that, as it stood, the paragraph might be misleading.

55. Mr. NDIAYE observed that, under article 40, States parties were to report on any factors and difficulties affecting the implementation of the Covenant. States parties must be allowed to speak for themselves, and the Committee could not in its comments substitute its own version of events. The first two sentences of paragraph 4 were objective statements of fact on which there could be no disagreement. The third and fourth sentences set out the Algerian authorities' assessment of events. He saw no need therefore to amend the paragraph.

56. The CHAIRMAN suggested that the clause "to prevent forces considered hostile to democracy" in the third sentence should be amended to read "to prevent forces they considered ...". That would make it clear that the view stated was Algeria's, not the Committee's.

57. It was so decided.

58. Paragraph 4, as amended, was adopted.

Paragraph 5

59. Mr. SADI proposed that the word "worried" in the second sentence of the English version should be replaced by the word "concerned".

60. Paragraph 5, as amended, was adopted.

Paragraph 6

61. Mr. MÜLLERSON said that it was inaccurate to say that measures taken to assist minorities were insufficient, because there had been no discussion in the Committee of any measures taken. What the Committee members had disliked was that the State party did not acknowledge the existence of minorities.

62. Mr. NDIAYE proposed replacing the second clause beginning with the words "and considers" with the phrase "and the non-recognition of minorities existing in Algeria, especially the Berbers".

63. It was so decided.

64. Paragraph 6, as amended, was adopted.

Paragraph 7

65. Mr. SADI proposed adding at the end of the first sentence the phrase "under fair and free conditions".

66. Paragraph 7, as amended, was adopted.

67. The draft comment on the initial report of Algeria, as a whole and as amended, was adopted.

Comments of the Human Rights Committee on the third periodic report of Colombia

68. Mr. WENNERGREN said that in his draft he had followed the guidelines for drafting such comments and, after consultation with a number of members of the Committee, had circulated a revised draft.

Paragraph 1

69. The CHAIRMAN recalled that the Committee had agreed to refer simply to its "comments"; the word "concluding" should therefore be deleted.

70. Paragraph 1, as amended, was adopted.

Paragraph 2

71. Mr. SADI proposed that the word "sincere" in the first line should be deleted leaving the Committee merely expressing its "appreciation".

72. It was so decided.

73. Paragraph 2, as amended, was adopted.

Paragraphs 3 and 4

74. Paragraphs 3 and 4 were adopted.

Paragraph 5

75. Mr. AGUILAR suggested that the comma before the word "which" in the second line should be put after the word; that the word "still" in the third line should be deleted, because no incidence of homicide, disappearances and torture could ever be acceptable.

76. It was so decided.

77. Paragraph 5, as amended, was adopted.

Paragraph 6

78. After a discussion in which the CHAIRMAN, Mr. DIMITRIJEVIĆ, and Mr. SADI took part, the CHAIRMAN proposed that the first sentence should be broken into two: the first sentence would thus end with the word "violations" in the second line. The new second sentence would begin "It should eliminate impunity ...".

79. It was so decided.

80. Paragraph 6, as amended, was adopted.

81. The draft comments on the third periodic report of Colombia, as a whole and as amended, were adopted.

The meeting rose at 6.05 p.m.

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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1148th MEETING

Held at Headquarters, New York,
on Friday, 10 April 1992, at 10 a.m.

Chairman: Mr. POCAR

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Closure of the session

The meeting was called to order at 10.25 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Comments on the Human Rights Committee on the second periodic report of Belgium

1. Mr. ANDO introduced the draft comments and said that he had attempted to incorporate in the text the various suggestions made by Committee members.

2. The CHAIRMAN invited the Committee to consider the text paragraph by paragraph.

Paragraphs 1 to 3

3. Paragraphs 1 to 3 were adopted.

Paragraph 4

4. The CHAIRMAN said that, in his view, the words "in a significant number of cases" were rather misleading.

5. Mr. ANDO suggested that they should be replaced by the words "to a certain extent".

6. Paragraph 4, as amended, was adopted.

Paragraph 5

7. Mr. ANDO suggested that, in order to reflect the concerns expressed by one member of the Committee, the words "the narrow scope of the interpretation given to article 6 of the Covenant" should be inserted after the words "other areas of concern include".

8. Miss CHANET expressed doubts concerning the reference to the transplant of organs and tissues of aborted foetuses, which had been included to reflect a concern expressed by Mr. Wennergren. She felt that it might be interpreted as a new position by the Committee on the question of foetuses or abortion, when the Committee had no intention of adopting such a position. The phrase should therefore be deleted or clarified.

9. Mr. ANDO and the CHAIRMAN agreed that the phrase should be deleted.

10. Mr. WENNERGREN said that he had only intended to ask for information and that the information provided by the Belgian delegation had raised no cause for concern. He therefore agreed that the phrase should be deleted.

11. The CHAIRMAN expressed doubts concerning the first sentence of the paragraph, noting that concern about the status of the Covenant in Belgian domestic law had been expressed only by certain members of the Committee. He himself did not share that concern.

12. Mr. MÜLLERSON said that he agreed with the Chairman's point of view. The Committee's concern was the effective implementation of the Covenant and not its place in domestic law. It was immaterial whether a country incorporated the Covenant into its national law, provided that its provisions were properly implemented. The sentence in question should therefore be deleted.

13. Mr. ANDO agreed that the sentence should be deleted.

14. Mr. HERNDL said the point at issue there was not the place of the Covenant in Belgian domestic law but rather that certain provisions of the Covenant were self-executing, while others were not. However, that was a matter for the implementing organ and not for the Committee. The sentence should therefore be deleted.

15. The CHAIRMAN suggested that the first part of the sentence could be retained and combined with the second sentence, since the question of the rights of aliens was the main area in which direct applicability was in doubt. The beginning of the paragraph would then read: "Although noting the direct applicability of several provisions of the Covenant which form part of Belgian domestic law, the Committee is concerned about the difference between civil rights enjoyed by citizens and those enjoyed by aliens ...".

16. Mr. EL-SHAFEI pointed out that members had been concerned that provisions of the Covenant were not self-executing and the comments should reflect that view. The representative of Belgium had said very clearly that it was necessary to go through the courts in order to invoke certain provisions of the Covenant, and that fact did cast doubt on the status of the Covenant in Belgian law.

17. Mr. MÜLLERSON agreed with the Chairman's proposal. The question of whether a State implemented the provisions of the Covenant directly or indirectly was a matter for the State itself. The Committee could offer guidance on how implementation might be improved, but the Covenant itself did not prescribe any particular method of implementation.

18. Miss CHANET said that she, too, supported the Chairman's proposal. A distinction should be drawn between the direct applicability of the provisions of the Covenant and the status of the Covenant in domestic law, which were two very different questions. The Covenant could be an integral part of domestic law but still require implementing provisions in certain specific cases.

19. Mr. ANDO said that he understood the concerns expressed by members. He felt that the most important question was the distinction between civil and political rights, which seemed to correspond to the difference between

(Mr. Ando)

self-executing and non-self-executing provisions. That was a different matter from the question of the civil rights enjoyed by Belgian citizens as opposed to aliens. If the first two sentences were to be combined, he felt that the second part of the sentence should read: "the Committee is concerned about the difficulty experienced by Belgium in distinguishing 'civil' from 'political' rights".

20. Mr. DIMITRIJEVIĆ thought that the problem derived from the word "concerned", since the Committee was not really concerned about the status of the Covenant in Belgian law. He suggested that the wording be amended to read: "the Committee finds it difficult to determine the exact status of the Covenant in Belgian domestic law", deleting the word "also" in the following sentence.

21. Mr. MÜLLERSON said that he preferred the Chairman's suggestion. The fact that the Committee found the status of the Covenant difficult to determine was not something which needed to be included in the final comments. The central issue was the implementation of the Covenant. In many countries it had no place at all in the domestic legal system but was nevertheless effectively implemented.

22. Miss CHANET said that some reference should be made to the fact that the provisions of the Covenant were not fully applicable in certain cases because of the complexity of the legal procedure, since that question had been central to the Committee's discussions. She therefore supported the Chairman's proposal.

23. The CHAIRMAN pointed out that those concerns were covered by paragraph 4, which referred to the "complexity of the Belgian legal framework".

24. Mr. ANDO said that he was prepared to accept the Chairman's proposal.

25. The CHAIRMAN suggested that the words from "about the exact status ..." to "... also concerned" should be deleted, that the words "the narrow scope of the interpretation given to article 6 of the Covenant" should be inserted after the words "other areas of concern include", and that the phrase "the transplant of organs and tissues of aborted foetuses in the light of the Transplant Act 1986" should be deleted.

26. It was so decided.

27. Paragraph 5, as amended, was adopted.

Paragraph 6

28. Mr. SADI said that it was inappropriate to recommend that a State party should "consider giving more weight" to provisions of the Covenant. He therefore proposed that the text should be amended to read: "The Committee recommends to the State party to reflect more adequately in internal administrative practice the provisions of the Covenant ...".

29. Mr. MÜLLERSON endorsed Mr. Sadi's proposal. He also had doubts concerning the penultimate sentence, which recommended that the State party should review the effectiveness of the protection granted to minority rights. He did not recall any expression of concern on the part of the Committee concerning minority rights. Indeed, several members had suggested that Belgian practice in that field should serve as a model for other countries. He therefore proposed that the sentence should be deleted or amended by replacing the word "review" by the words "continue to improve".

30. Miss CHANET said that the reference to article 14 of the Covenant should be deleted since its provisions were covered by the seventh Protocol to the European Convention on Human Rights, to which Belgium was a party. Reference should be made to article 25 instead.

31. The CHAIRMAN endorsed Miss Chanet's proposal.

32. Mr. ANDO said that with regard to the proposal by Mr. Müllerson, Belgium was divided into three different linguistic communities and each of those communities included linguistic minorities. The sentence in question was intended to refer to the practical problems of protecting the rights of those minorities and not to imply discrimination. He agreed that the reference to article 14 should be deleted and replaced by a reference to article 25.

33. The CHAIRMAN suggested that the words "to consider giving more weight" should be replaced by the words "to reflect more adequately", that the reference to article 14 should be replaced by a reference to article 25, and that the words "review the effectiveness of" should be replaced by the words "continue to improve the effectiveness of".

34. It was so decided.

35. Paragraph 6, as amended, was adopted.

36. The draft comments as a whole, as amended, were adopted.

Comments of the Human Rights Committee on the third periodic report of Yugoslavia

37. The CHAIRMAN invited the Committee to consider the text paragraph by paragraph.

Paragraph 1

38. Mr. WENNERGREN said that the Committee should take note of Yugoslavia's efforts to draft a new, more democratic constitution that would improve the observance of human rights. The Committee should also take note of the fact that Yugoslavia had established a special committee to investigate cases of genocide and violations of humanitarian law during the armed conflicts.

39. Miss CHANET said that the new Yugoslav constitution was being drawn up only for Serbia and Montenegro, and that other republics that might wish to adopt it could do so at a later time. In the light of the complex situation and the secession of a number of republics, she wondered whether the drafting of a new constitution was not a trap for the newly independent republics. She therefore could not accept the view that the drafting of a new constitution was a positive factor.

40. She suggested that the Committee should take note that a federal committee had been established to investigate human rights violations during the armed conflicts.

41. Mr. WENNERGREN said that the Committee should add a new paragraph 2 which would read:

> "2. The Committee notes as a positive factor that a federal committee of investigation has been established in order to conduct investigations concerning genocide and violations of humanitarian law during the armed conflicts."

Perhaps the paragraph could be reworded at a later time to include the exact name of the federal committee.

42. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to insert a new paragraph 2 in the comments, as proposed by Mr. Wennergren. The subsequent paragraphs would be renumbered accordingly.

43. Paragraph 1 was adopted.

44. Paragraph 2 was adopted.

Paragraph 3

45. Mr. SADI said that he did not understand why the Committee should refer only to problems in Kosovo when the whole country was in turmoil. He did not think that it was appropriate in the last sentence of paragraph 3 for the Committee to express an opinion about the peace-keeping operations and the cease-fire.

46. Miss CHANET said that she shared Mr. Sadi's view, and suggested that, in the first sentence of paragraph 3, the reference to Kosovo should be deleted. The reference in the last sentence to the United Nations peace-keeping operations and the cease-fire did not affect on the Covenant, and it would be strange for the Committee to ignore the ongoing peace-keeping efforts.

47. Mr. EL-SHAFEI said that, in the first sentence of the paragraph, it seemed as if the difficulties in the province of Kosovo were related to the Committee's consideration of the second periodic report of Yugoslavia.

48. The CHAIRMAN suggested that reference to the period following the consideration of the second periodic report of the State party should be deleted.

49. Mr. ANDO supported Mr. Sadi's proposal to delete the last sentence of the paragraph.

50. The CHAIRMAN suggested that, in the last sentence of the paragraph, the Committee should simply note that a peace-keeping operation had been set up.

51. Paragraph 3, as amended, was adopted.

Paragraph 4

52. Mr. WENNERGREN proposed that, after the first sentence, a new sentence should be inserted, which would read:

> "The Committee wants to emphasize the urgency of the continuing implementaton of the Covenant in those republics."

53. Mr. SADI said that, in paragraph 4, the Committee was suggesting that the right to secede had not been made available by the federal Government, and he wondered whether that was an established fact. During the discussion of the report, the Yugoslav delegation had indicated that it had no quarrel with the republics' exercise of their right to self-determination, as long as they followed the procedure established by the Yugoslav Constitution. That suggested that the legal means for secession were available.

54. Miss CHANET said that, during the discussion of the report, Mr. Herndl had inquired about the right to secession. He had based his question on information contained in the third periodic report, in which that right was more clearly defined than in the Yugoslav Constitution itself. Mr. Herndl had asked whether everything that had happened could have been avoided, since the Yugoslav Constitution contained provisions for a peaceful settlement when republics wished to secede from the federation. The discussion had been purely hypothetical and had had no bearing on the actual situation. That was what she had wished to reflect in the comments.

55. Paragraph 4, as amended, was adopted.

Paragraph 5

56. Mr. SADI said that the Committee should clearly indicate that the atrocities mentioned in paragraph 5 had been committed on both sides. Moreover, when the Committee regretted that there had been too few investigations of such violations, it should specify that it was referring to areas under the control of the federal authorities.

57. Miss CHANET said, in response to Mr. Sadi's observation, that paragraph 5 referred, inter alia, to abuses committed by members of the federal army and that a State was liable for the acts of its army, irrespective of where those acts were committed. For that reason, she felt that the wording of the paragraph was appropriate.

58. For the purposes of clarity, she suggested the insertion of the words "it regrets," in paragraph 5, between "and" and "in consequence".

59. Mr. WENNERGREN suggested that the word "guaranteed" in paragraph 5 should be replaced by "protected" the first time it was used, and the second time, by the phrase "which should prevail" and he suggested strengthening the wording by replacing the word "mentioned" with "highlighted". As a result, the second sentence would read in English: "It is concerned at the numerous violations of human rights protected by the Covenant, in particular those highlighted in article 4, paragraph 2, of the Covenant, which should prevail under any circumstances (right to life and prohibition of torture in particular)".

60. The CHAIRMAN proposed that the paragraph should be amended, as suggested by Mr. Wennergren, and that the phrase "it regrets", suggested by Miss Chanet, should be inserted in the last sentence.

61. Paragraph 5, as amended, was adopted.

Paragraph 6

62. Mr. WENNERGREN suggested that the words "old people and" should be inserted in the text between "in particular" and "children".

63. Mr. PRADO VALLEJO said that in times of civil war it was difficult to ensure freedom of movement and natural that there should be restrictions, de jure and de facto, to prevent loss of life. He therefore considered it pointless for the Committee to deplore the lack of freedom of movement in an area torn by civil war.

64. Miss CHANET said, in response to Mr. Wennergren's suggestion, that women should also be added to the list.

65. With regard to Mr. Prado Vallejo's comment, she pointed out that the same qualification could be made about the rights to privacy and freedom of association: it was difficult to guarantee those rights in a time of civil war. It was not the restrictions themselves, but their scope that the Committee deplored, however, considering it to be excessive even in the circumstances.

66. The CHAIRMAN proposed that the text of the paragraph should be amended to include women and old people.

67. Paragraph 6, as amended, was adopted.

Paragraph 7

68. Miss CHANET suggested that the text should be revised in such a way as to cover populations which had become de facto minorities following inter-ethnic conflicts, in particular, the Serbian and Croat minorities in certain republics.

69. The CHAIRMAN proposed that the phrase "and populations which have now become de facto minorities following recent inter-ethnic conflicts" be added to the end of the paragraph.

70. Paragraph 7, as amended, was adopted.

Paragraph 8

71. Paragraph 8 was adopted.

72. Miss CHANET, supported by Mr. ANDO, repeated earlier suggestions by Mr. El-Shafei and Mr. Wennergren that the Committee should endeavour to convey its concern that all the populations under the protection of the Covenant should continue to enjoy the fundamental rights and freedoms which it guaranteed. As the State party to which the recommendation was addressed no longer exercised control over certain areas it would be necessary to find a neutral wording for that concern.

73. The CHAIRMAN suggested the addition of a new paragraph, mentioning the newly independent territories and expressing the Committee's concern, addressed not to the State party in particular, but to the international community as a whole, that the provisions of the Covenant should continue to be implemented in those republics.

74. Mr. NDIAYE said that the Committee was obliged to adhere strictly to its mandate and that, as the recommendation was addressed to Yugoslavia and Yugoslavia was not in control of those republics, there could be no justification for the inclusion of such a paragraph.

75. The CHAIRMAN conceded that the concern which the Committee wished to express could not legitimately be included in the recommendation to Yugoslavia.

76. The draft comments as a whole, as amended, were adopted.

Submission of reports by States parties under article 40 of the Covenant (continued)

77. The CHAIRMAN drew attention to a document which was before the members of the Committee, concerning the submission of reports by States parties under article 40 of the Covenant. The Bureau suggested that, at its next session, the Committee should consider the third periodic reports of the Republic of Belarus and Mongolia, the second periodic report of Afghanistan and the

(The Chairman)

initial reports of the Republic of Korea and Burundi, and should conclude its consideration of the second periodic report of Peru, as decided earlier. The second periodic reports of Venezuela and the United Republic of Tanzania would be kept in reserve in case any of the above-mentioned countries requested postponements.

78. It was so decided.

79. Ms. KLEIN (Secretary of the Committee) said that since December 1991, the Secretariat had received the third periodic reports of Japan and Norway and the second periodic reports of Venezuela and Egypt.

80. The CHAIRMAN said that, in considering the status of reports, the Bureau had also recommended that the Committee should make a special effort to consider the reports of countries in situations of emergency. The Bureau had reviewed the list of overdue reports and had found that the situation in two countries - Somalia and Kenya - deserved consideration; it had therefore suggested that the Committee should request one of those countries to submit its report at the earliest possible date.

81. Mr. PRADO VALLEJO said that, while he welcomed the initiative undertaken by the Bureau, he had difficulty understanding how the Committee could consider an additional report, as it had already scheduled six reports for its July session.

82. The CHAIRMAN said that if the Committee decided to adopt the Bureau's suggestion, it should postpone one of the reports currently scheduled.

83. Mr. AGUILAR drew attention to a draft decision which was before the members of the Committee, requesting the Government of Peru to submit not only answers to the questions raised during the consideration of its second periodic report on 31 March and 1 April 1992, but also information relating to events subsequent to the consideration of the report, in other words, to the suspension of the constitutional order in Peru.

84. Mr. PRADO VALLEJO, Mr. SERRANO CALDERA and Mr. SADI said that they supported the draft decision proposed by Mr. Aguilar.

85. Mr. EL-SHAFEI asked whether the Committee would need to devote more than one meeting to the additional information from Peru; if so, that would conflict with decisions already taken.

86. Mr. AGUILAR said that the current situation in Peru was extremely grave; there were, in fact, two sources of governmental authority, namely, the President of the Republic, and the man who had been the second Vice-President, to whom the members of both houses of Congress had sworn allegiance at a secret meeting. Furthermore, article 82 of the Constitution provided for the right to take up arms in order to overthrow a Government which had usurped

(Mr. Aguilar)

power. That provision would permit a derogation from article 6 of the Covenant. If the Committee did not request additional information on such a situation, its prestige would suffer.

87. Mr. SADI said there was a possibility that the Government of Peru might not send a delegation to the July session.

88. The CHAIRMAN said that even in the absence of the delegation, the Committee should discuss the situation in the country and should issue its concluding observations. As a minimum of two meetings would be needed for that discussion, he suggested that the second periodic report of Afghanistan should be placed in reserve and should be treated as the first reserve report. If he heard no objection, he would take it that the Committee decided to adopt that suggestion.

89. It was so decided.

90. Mr. PRADO VALLEJO, referring to the draft decision proposed by Mr. Aguilar, suggested that in paragraph 1, article 25 should be added to the articles of the Covenant which the Government of Peru was requested to take into account in submitting additional informaltion.

91. Mr. SADI said that he supported Mr. Prado Vallejo's proposal.

92. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee decided to adopt the draft decision proposed by Mr. Aguilar, as orally amended by Mr. Prado Vallejo.

93. It was so decided.

94. The CHAIRMAN said that at its November 1991 session, the Committee had decided to request the Chairman to send a letter to the Government of Germany, asking it to consider the possibility of submitting a special report on the new Länder, as the Committee had been unable to consider the situation in eastern Germany for some time. In January 1992, the Government had replied that, having consulted the competent authorities, it preferred to submit its fourth periodic report as scheduled in August 1993. The report would reflect developments in the five new Länder. If he heard no objection, he would take it that the Committee authorized him to reply to the Government, acknowledging the receipt of its letter, and emphasizing the Committee's understanding that the Government would submit its fourth periodic report on time.

95. It was so decided.

96. The CHAIRMAN said that during the current session, according to the usual practice, a number of contacts had been established with the permanent missions of countries whose reports were overdue; the Bureau had endeavoured, in particular, to establish contact with those countries whose reports had been overdue prior to the end of 1989. It was to be hoped that those efforts would lead to the early submission of the reports in question.

97. Mr. ANDO said that he had recently been informed by Bulgaria that its report would be submitted at the end of May 1992 for consideration at the earliest possible date.

ORGANIZATIONAL AND OTHER MATTERS (continued)

98. The CHAIRMAN said that if he heard no objection, he would take it that the Committee agreed to establish the following working groups for its July session: the Working Group on Communications, consisting of Mr. Ndiaye, Mr. Fodor, Mr. Mavrommatis, Mr. Sadi and Mr. Prado Vallejo; and the Working Group on Article 40, consisting of Mr. Aguilar, Mr. Ando, Mr. Dimitrijević and himself.

99. It was so decided.

100. The CHAIRMAN said that the Working Group on Communications would consider cases at the admissibility stage and would adopt decisions or make recommendations to the Committee, as the case might be. It would also prepare draft guidelines for the Special Rapporteur on Follow-up. The Working Group on Article 40 would prepare the list of issues, would consider the draft general comments on articles 18 and 25 and the issue raised by one country with regard to communications, and would make recommendations to the Committee in that regard.

101. At the Committee's session in the spring of 1991, Mr. Lallah had been appointed Special Rapporteur for New Communications for a term of one year. He had recently contacted Mr. Lallah, who had stated that he would be able to continue exercising those functions until the autumn of 1992, at which time the Committee would hold new elections. If he heard no objection, he would take it that the Committee decided to reappoint Mr. Lallah as Special Rapporteur for New Communications without specifying the duration of his term of office.

102. It was so decided.

103. The CHAIRMAN said that at a recent meeting, he had requested the members of the Committee to consider volunteering to provide liaison with other treaty bodies. Since he had already established contact with the Chairman of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, he suggested that he should continue in that role; he would welcome suggestions with regard to the other treaty bodies.

104. Miss CHANET suggested that she could establish contact with the Committee against Torture.

105. Mr. DIMITRIJEVIĆ volunteered to ensure liaison with the Committee on the Elimination of Discrimination against Women.

106. Mr. PRADO VALLEJO volunteered to provide liaison with the Committee on Economic, Social and Cultural Rights.

107. Mr. SADI proposed to establish contact with the Committee on the Rights of the Child.

108. Mr. EL-SHAFEI volunteered to maintain contact with the Committee on the Elimination of Racial Discrimination.

109. The CHAIRMAN requested those members of the Committee who had volunteered to provide liaison to report to the Committee on matters discussed by the other treaty bodies which might have a bearing on the Committee's work.

110. Mr. ANDO said that he had been endeavouring to obtain a contribution from a Japanese private foundation in order to accelerate the publication of the Committee's yearbook. The foundation had now decided that it would accept an application from the Chairman; it was to be hoped that the Chairman could pursue that offer before the July session.

111. The CHAIRMAN said that he would take the necessary steps.

CLOSURE OF THE SESSION

112. The CHAIRMAN said that during its forty-fourth session, the Committee had improved its methods of work. For the first time, it had been able to make collective observations on the reports of States parties; he expressed appreciation to the Rapporteurs for their efforts in that regard. The Committee had adopted a general comment on article 10 and had finalized its comment on article 7. It had also dealt with a number of communications, had adopted eight views on nine cases and had taken two decisions on inadmissibility. The Working Group on Communications had adopted 13 decisions on admissibility and two decisions under rule 91 of the rules of procedure. The Committee had been unable to consider a number of draft recommendations because of lack of time. It was to be hoped that 18 draft recommendations from the Working Group could be dealt with at the next session; in that connection, he suggested that the members of the Committee should take the dossier containing those draft recommendations with them and should study them prior to July.

113. After an exchange of courtesies, he said that the Committee had concluded the work of its forty-fourth session.

The meeting rose at 1 p.m.